THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition Nos.19951 and 25061 of 2004

Date: 11.12.2006

W.P. No. 19951 of 2004

Between:

Union Bank of India, having its Central Office at Mumbai and
one of its Units situated at Lata Complex, Jasbagh, Nampally,
Hyderabad-500 001, rep. by its
Deputy General Manager,
Mr. S.M. Nasir.

.... PETITIONER

AND

The Presiding Officer, Central Government Industrial Tribunal-cum-
Labour Court, M-2 Block, Manoranjan Complex, M.J. Road, Hyderabad,
and others.

.....RESPONDENTS

W.P. No. 25061 of 2004

Between:
G. Srinivas, S/o G. Pentaiah, agedabout 35 years, R/o Hyderabad.

…. **PETITIONER**

And
The Presiding Officer, Central Government Industrial Tribunal-cum-
Labour Court, M-2 Block, Manoranjan Complex, M.J. Road, Hyderabad
and another.

……. **RESPONDENTS**

THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition Nos.19951 and 25061 of 2004

Common Order:

Aggrieved by the award, dated 12.01.2004 passed by the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad (for short 'the Labour Court'), in I.D. No. 33 of 2001, the management of Union Bank of India filed W.P. No.19951 of 2004, while the workman filed W.P. No. 25061 of 2004.

Since both the writ petitions arise out of the same award, they are being disposed of by this common order. For the sake of convenience, the parties shall be referred to as arrayed in the I.D. before the Labour Court.

The facts of the case, in brief are - the petitioner-workman claiming that he worked as Sub-staff in the respondent-Bank for 373 days from 01.07.1995 to 12.10.1996, and that the respondent-Bank without issuing any notice and without following the procedure contemplated under the Industrial Disputes Act, 1947 terminated his services, raised an industrial dispute in I.D. No. 33 of 2001 on the file of the Labour Court. The respondent-Bank contested the claim by filing counter.

The Labour Court, having considered the rival contentions in the light of the evidence adduced by the parties, observed that there is no evidence placed by the workman to show that he worked for 373 days. Though the Labour Court observed that there is no evidence placed by the workman to show that he worked for 373 days, yet it recorded a finding that the petitioner had worked for more than 240 days in the respondent-Bank. The Labour Court further taking the wage of the

petitioner-workman at Rs.40/- per day, as is evident from Exs. W3 and W4, awarded an amount of Rs.4,000/- for 100 days and an amount of Rs.1,000/- towards cost of the litigation. Aggrieved by the said award, both the petitioner-workman as well as the respondent-Bank filed the respective writ petitions, as stated above.

The learned counsel for the petitioner-workman submitted that the Labour Court having given a finding that the petitioner-workman had worked for more than 240 days in the respondent-Bank, ought to have directed the respondent-Bank to reinstate him into service, and it committed an error in ordering payment of Rs.5,000/-. He thus prayed that the respondent-Bank be directed to reinstate the petitioner-workman into service.

On the other hand, the learned Standing Counsel for the respondent-Bank contended that the Labour Court having observed that there is no evidence placed by the petitioner-workman to show that he worked for 373 days, erred in holding that the petitioner-workman worked for more than 240 days in the respondent-Bank, based on Exs. W3 and W4-xerox copies of the payment vouchers. He contended that the findings of the Labour Court are perverse and contrary to the evidence on record, and in fact, its own observations. He further contended that the Labour Court by directing the respondent-Bank to pay a sum of Rs.5,000/- to the petitioner-workman, has shown undue sympathy to the petitioner-workman, who in fact, has come to the Court with unclean hands. He, thus, prayed that the impugned award passed by the Labour Court be set aside, and the writ petition filed by the respondent-Bank be allowed, and the writ petition filed by the petitioner-workman be dismissed.

Heard the learned counsel for the petitioner-workman and the learned Standing Counsel for the respondent-Bank and perused the impugned award passed by the Labour Court.

As can be seen from the impugned award passed by the Labour Court, the petitioner-workman on his behalf examined himself as W.W.1 and one Sri. H.L. Prakash Rao as W.W.2, and marked Exs. W.1 and W2, namely xerox copies of petty cash vouchers and copy of ration card of W.W.1, while on behalf of the respondent-Bank, its Assistant Manager examined himself as M.W.1, but marked no documents.

Though the petitioner-workman claimed that he worked for 373 days, but in his evidence as W.W1, he stated that he has not filed any appointment order and that he does not remember as to who allowed him to work in the respondent-Bank. Though the petitioner-workman to substantiate his contention that he worked in the respondent-Bank, filed Ex.W1-payment vouchers, the fact remains, they are merely xerox copies of the payment vouchers, and though in his evidence, he stated that one Mr. Narasimhachary had permitted him to take the xerox copies of Ex. W1, who is said to be the custodian of the record, he refused to examine

Mr. Narasimachary to prove that he gave the xerox copies of the payment vouchers.

Further, the petitioner examined one Mr. H.L. Prakash Rao, who is working as Cashier in the respondent-Bank as W.W.2, to show that the payment vouchers were prepared by him, but the fact remains, W.W.2 in his evidence, while admitting that some of the vouchers were prepared by him, deposed that the person, who claimed to have received the amount under the said vouchers, did not sign before him, and that he does not know whether the petitioner-workman was working regularly from July 1995 to June 1996, and in fact, he further stated that none of the vouchers produced by the petitioner-workman show that payment was made by the respondent-Bank to the petitioner-workman thereunder.

If really the petitioner-workman had worked with the respondent-

Bank, nothing prevented him from producing the appointment order or mentioning the name of the person who permitted him to work or examining the person, who is said to have permitted him to take xerox copies of the vouchers. On the other hand, the petitioner-workman instead of examining the person, who permitted him to take xerox copies of payment vouchers, in his evidence stated that he will not examine the person who had permitted him to take xerox copies of the vouchers. This conduct of the petitioner-workman gives rise to suspicion that the xerox copies of the vouchers produced by him are not genuine, and more so when W.W.2, who was examined on behalf of the petitioner-workman, in his evidence stated that no payment was made by the respondent-Bank to the petitioner-workman under Exs. W1 and W2. Apart from that, it is the specific case of the respondents-Bank, and in fact, is evident from the evidence of M.W.1 that none of the payment vouchers produced by the petitioner-workman bears his name. If really the petitioner-workman had received the payments under Exs. W1 and W2, certainly his name would have been found on them, and in the absence of his name on the payment vouchers, his contention that he had received payment from the respondent-Bank thereunder, cannot be accepted. In that view of the matter, it can safely be said that the petitioner-workman failed to prove that he had worked with the respondent-Bank and received payments.

The Labour Court having observed that the workman failed to prove that he worked for 373 days, basing on Exs. W3 and W4 committed an error in holding that the petitioner-workman worked for 240 days. This finding of the Labour Court is not based on any concrete evidence. Merely because Exs.W3 and W4-xerox copies of the vouchers contain the name of the petitioner-workman, it cannot be said that the petitioner-worked for 240 days, and more so when M.W.1 in his evidence stated that he would verify the same with the originals.

Therefore, placing reliance on Exs. W3 and W4, the Labour Court ought not to have held that the petitioner worked for 240 days. The Labour Court, therefore, has not only committed an error in holding that the petitioner-workman worked for 240 days, but also committed an error in directing the respondent-Bank to pay to the petitioner-workman a sum of Rs.4,000/- (Rs.40/- per day for 100 days) and a sum of Rs.1,000/- towards cost of the litigation.

In the above view of the matter, the impugned award passed by the Labour Court, cannot be sustained, and it is accordingly set aside. The writ petition in W.P. No. 19951 of 2004, filed by the respondent-Bank is allowed, and the writ petition

in W.P. No. 25061 of 2004, filed by the petitioner-workman, is dismissed. There shall be no order as to costs.

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N.V. RAMANA, J.

Date: 11.12.2006
Nsr/Ksr/Sj